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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,389	04/13/2001	Jerrold E. Franklin	3737.02-1	3452
33321	7590	12/06/2004	EXAMINER	
DANIEL P. MAGUIRE			CANTELMO, GREGG	
423 E ST.				
DAVIS, CA 95616			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/834,389	FRANKLIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregg Cantelmo	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

## Disposition of Claims

4)  Claim(s) 2-18,20 and 22-37 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 2-18,20 and 22-37 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 5, 2004 has been entered.

### ***Response to Amendment***

2. In response to the amendment received September 9, 2004:
  - a. Claims 2-18, 20 and 22-37 are pending;
  - b. The drawing objections are withdrawn in light of the cancellation of the claimed subject matter not shown in the drawings;
  - c. The specification objection stands in response to the amendment;
  - d. The 112 rejections are withdrawn in light of the amendment.

### ***Specification***

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e.,

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continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

The amendment recites the continuing data in the first three sentences of the specification and should be in one sentence.

The amendment's filed after the previous office action and before the amendment received September 9, 2004 have not been entered. The amendment filed September 9, 2004, being compliant, has been entered but does not include the amendment to the specification.

***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 2-18, 20 and 22-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-22 of copending Application No. 10/369,257. Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Copending Application No. 10/369,257 claims a fuel cell having a single flexible or ridged bipolar separator, flexible mean and flexible seal, adhesive or gasket and manifold as defined in copending claim 2 applied to instant claim 2.

Copending Application No. 10/369,257 claims providing additional modules to form a fuel cell stack or unit (copending claim 3 as applied to instant claim 3).

Copending claim 4 and instant claim 4 are identical in scope. Copending claim 5 and instant claim 5 are identical in scope. Copending claim 6 and instant claim 6 are identical in scope. Copending claim 7 and instant claim 7 are identical in scope.

Copending claim 8 and instant claim 8 are identical in scope. Copending claim 9 and instant claim 9 are identical in scope. Copending claim 10 and instant claim 10 are identical in scope. Copending claim 11 and instant claim 11 are identical in scope.

Copending claim 12 and instant claim 12 are identical in scope. Copending claim 13 and instant claim 13 are identical in scope. Copending claim 14 and instant claim 14 are identical in scope. Copending claim 15 and instant claim 15 are identical in scope.

Copending claim 16 and instant claim 16 are identical in scope. Copending claim 17 and instant claim 17 are identical in scope. Copending claim 18 and instant claim 18 are identical in scope. Copending claim 20 and instant claim 20 are identical in scope.

Copending claim 22 and instant claim 22 are identical in scope.

Copending Application No. 10/369,257 claims a fuel cell having a single flexible or ridged bipolar separator, flexible mean and flexible seal, adhesive or gasket and manifold as defined in copending claim 2 applied to instant claim 23.

Copending Application No. 10/369,257 claims providing additional modules to form a fuel cell stack or unit (copending claim 3 as applied to instant claim 24). Copending claim 5 and instant claim 25 are identical in scope. Copending claim 6 and instant claim 26 are identical in scope. Copending claim 7 and instant claim 27 are identical in scope. Copending claim 8 and instant claim 28 and 29 are identical in scope. Copending claim 10 and instant claim 30 are identical in scope. Copending claim 11 and instant claim 31 are identical in scope. Copending claim 13 and instant claim 32 are identical in scope. Copending claim 14 and instant claim 33 are identical in scope. Copending claim 15 and instant claim 34 are identical in scope. Copending claim 16 and instant claim 35 are identical in scope. Copending claim 17 and instant claim 36 are identical in scope. The bent or crimped edges are inherently one of continuous or discontinuous (as applied to claim 37).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPAT No. 5,773,161 (Farooque) discloses a bipolar separator plate. USPAT No. 5,698,337 (Nitschke) discloses a separator arrangement for a MCFC. USPAT No. 6,372,374 (Li) discloses a separator arrangement for a MCFC.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is (571) 272-

1283. The examiner can normally be reached on Monday to Thursday from 9 a.m. to 6 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. FAXES received after 4 p.m. will not be processed until the following business day. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregg Cantelmo  
Primary Examiner  
Art Unit 1745

gc  
  
December 2, 2004